

JUDITH A. PHILIPS
Acting United States Attorney
District of Hawaii

MICHAEL NAMMAR
MICAH SMITH
MARK A. INCIONG CA BAR #163443
Assistant U.S. Attorneys
Room 6100, PJKK Federal Building
300 Ala Moana Boulevard
Honolulu, Hawaii 96850
Telephone: (808) 541-2850
Facsimile: (808) 541-2958
Email: Michael.Nammar@usdoj.gov
 Micah.Smith@usdoj.gov
 Mark.Inciong@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 19-00099-03 DKW
)	
Plaintiff,)	UNITED STATES' RESPONSE TO
)	DEFENDANT'S APPEAL OF THE
vs.)	MAGISTRATE COURT'S PRETRIAL
)	DETENTION ORDER; EXHIBIT A;
KAULANA FREITAS,	(03)) CERTIFICATE OF SERVICE
aka "Shorty,")	
)	
Defendant.)	
_____)	

**UNITED STATES' RESPONSE TO DEFENDANT'S APPEAL OF
THE MAGISTRATE COURT'S PRE-TRIAL DETENTION ORDER**

COMES NOW, the plaintiff, United States of America, by and through its counsel, Judith A. Philips, Acting United States Attorney, and Michael Nammar, Micah Smith and Mark A. Inciong, Assistant United States Attorneys and, pursuant to 18 U.S.C. § 3145(c), hereby responds to the defendant's request to revoke the pre-trial detention order issued by the United States Magistrate Court on August 4, 2021.

A. STATEMENT OF THE CASE

Defendant KAULANA FREITAS, aka "Shorty," ("FREITAS") is presently charged in the Second Superseding Indictment with:

- Participating in a racketeering conspiracy, referred to in the Superseding Indictment as the "Miske Enterprise," in violation of Title 18, United States Code, Section 1962(d) (Count 1);
- Conspiracy to use a chemical weapon, in violation of Title 18, United States Code, Section 229(a)(2), in connection with the release of chloropicrin into nightclubs in Honolulu (Count 12);
- Using a chemical weapon, in violation of Title 18, United States Code, Sections 229(a)(1) and 229(a)(2), in connection with the conspiracy to release chloropicrin into "Nightclub 1" (Count 13);
- Conspiracy to distribute: (1) 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine; (2) five kilograms or more of cocaine; (3) a quantity of oxycodone; and (4) a quantity of marijuana, in violation of Title 21, United States Code, Sections 846, 841(b)(1)(A), 841(b)(1)(C), and 841(b)(1)(D) (Count 16);

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B. APPLICABLE LAW

A magistrate judge's bail rulings are subject to de novo review in the district court. *United States v. Koenig*, 912 F.2d 1190, 1192-3 (9th Cir. 1990). The district court has original jurisdiction over the felonies charged, and is therefore not exercising appellate jurisdiction over the magistrate judge's decision. *Id.*

C. DETENTION PROCEEDINGS

On July 15, 2020, the Government filed its Motion to Detain against FREITAS. *ECF 24*. A detention hearing was held on July 31, 2020 at which time the United States apprised the Magistrate Court of the presumption of detention which applied to FREITAS. Specifically, due to the ten-year or more penalty authorized by Count 16 of the Superseding Indictment which charged FREITAS with a violation of 21 U.S.C. § 841(b)(1)(A), a rebuttable presumption was invoked that there was no condition or combination of conditions that would reasonably assure the appearance of the person as required or the safety of the community. *See* 18 U.S.C. §§ 3142(e)(3)(A) and (B).

The United States also described to the Magistrate Court FREITAS' involvement in the chemical weapon attack charged in Counts 12 and 13 of the Superseding Indictment and that FREITAS deposited over \$162,000 in checks written to him by Co-defendant Michael J. Miske, Jr. in 2018-2019.

The Magistrate Court granted the Government's motion to detain and ordered FREITAS detained without bail, pending trial, citing FREITAS' failure to rebut the applicable presumption of detention along with the facts alleged in the Superseding Indictment. A written order of detention was entered on August 4, 2020.¹ *ECF 127*.

D. POINTS & AUTHORITIES

The United States relies on the legal citations and arguments previously made in its memorandum in support of detention which is attached as Government Exhibit A and incorporated by reference herein.

CONCLUSION

The United States believes defendant FREITAS was correctly detained by the Magistrate Court and will defer to this Court as to whether the facts presented

¹ It is plain that the August 4, 2020 detention order issued by the Magistrate Court contained a typographical or scrivener's error citing 18 U.S.C. § 3142(e)(2) rather than 18 U.S.C. § 3142(e)(3) regarding the rebuttable presumption that applied to FREITAS. The error was likely that of undersigned Government counsel who, in preparing the detention order at the request of the Magistrate Judge, apparently simply checked the incorrect box on form AO 472. Regardless, the United States never alleged at any time in its efforts to detain FREITAS that a rebuttable presumption applied pursuant to 18 U.S.C. § 3142(e)(2) or that FREITAS had any qualifying conviction to do so. Given FREITAS' lack of any prior felony conviction, it would have been nonsensical and impossible for the Magistrate Court to rely on 18 U.S.C. § 3142(e)(2) as the source of the rebuttable presumption for which FREITAS was, in part, detained. Thus, it is clear that the rebuttable presumption upon which the Magistrate Court relied was that provided in 18

in defendant's Notice of Appeal constitute the necessary change(s) in circumstances for purposes of revoking the current order of detention and setting bail pursuant to 18 U.S.C. §§ 3142 and 3145.

DATED: December 10, 2021, at Honolulu, Hawaii.

Respectfully Submitted,

JUDITH A. PHILIPS
Acting United States Attorney
District of Hawaii

/s/ Mark A. Inciong

By _____
MARK A. INCIONG
Assistant U.S. Attorney
UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below,
a true and correct copy of the foregoing was served on the following at their last
known addresses:

Served Electronically through CM/ECF:

Marc Victor, Esq.

Attorney for Defendant
KAULANA FREITAS

DATED: December 10, 2021, at Honolulu, Hawaii.

/s/ Dawn Aihara
